

OGC HAS REVIEWED.

4 June 1951

MEMORANDUM FOR: Mr. Houston

SUBJECT : Comments on Renegotiation Act of 1951

1. The designations of additional agencies by the President will be based on the principle, "such other agencies of the Government exercising functions having direct and immediate connection with the national defense as the President may direct.
2. Based on the legislative interpretation of the words "direct" and "immediate" it would appear that many of our contracts establish the relationship contemplated by the subject Act.
3. Amount on which renegotiation is based---A contractor or subcontractor is not subject to renegotiation unless the aggregate amount received or accrued exceeds \$250,000 in any one year---\$25,000 for contract brokers whose income is derived from fee or commissions.
4. The Renegotiation Board is the Administrative Agency and consists of five members appointed by the President, with the advice and consent of the Senate. Under the heading "mandatorily exempted, "contracts determined by the Renegotiation Board not to have a direct and immediate connection with national defense."
5. Under the permissive exemptions of the Act, the Renegotiation Board is given discretionary authority to exempt any contract or subcontract for renegotiation which would jeopardize secrecy required in the public interest.
6. Procedural aspects. The Renegotiation Board is set up as the primary renegotiating activity, with appeal to the Tax Court of the United States upon filing a timely petition.
7. Comments:
  - (a) In the absence of statutory renegotiation the only means available to CIA for the recapture of excessive profits, lies in contract renegotiation or redetermination. This is not always suitable or appropriate, particularly where the contract is negotiated on a fixed price basis. It was my experience that had I been equipped with the threat of statutory renegotiation, many contractors would have been more willing to enter into voluntary renegotiations. The only basis available to the Office of Strategic Services, for example, was contractual renegotiations

or redetermination or recapture of excessive profits on the basis of termination procedure which automatically conferred upon the Contracting Officer (under a liberal interpretation) a right to revisit the terminated contract and any related portions.

(b) An authorized value of not automatically subjecting a CIA contract or subcontract to renegotiation with CIA retaining an election to submit it to renegotiation upon a CIA determination that revelation would not jeopardize secrecy would be most effective. Perhaps, with respect to classified contracts this might be accomplished by a permissive exemption by general class with the right of CIA to open the door for renegotiation purposes upon an appropriate determination.

1) Right to use clause when needed

Asst. General Counsel

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